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of the State of California
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Attorneys for Complainant

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. AC-1999-23

PAUL E. NIETZEL
212 S. 74th Street, Suite 203
Omaha, Nebraska 68114

CPA License Number 67855

Respondent.

**STIPULATION IN SETTLEMENT
AND DECISION**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Board of Accountancy, State of California ("Board"), the parties submit this Stipulation and Decision to the Board for its approval and adoption as the final disposition of the Accusation.

The parties stipulate the following is true:

1. An Accusation is currently pending against Paul E. Nietzel ("respondent"), before the Board. The Accusation, together with all other statutorily required documents, was duly served on the respondent.

2. At all times herein, respondent has been licensed by the Board of Accountancy under License No. CPA 67855.

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1 3. Respondent is not represented by counsel. Respondent has fully reviewed
2 this Stipulation and understands the effects of this Stipulation and the disciplinary order proposed
3 herein.

4 **WAIVERS OF RIGHTS**

5 4. Respondent has read and understands the charges and violations alleged in
6 the Accusation.

7 5. Respondent gives up, relinquishes and waives the right to a hearing, the
8 right to subpoena witnesses and documents on his behalf, the right to cross-examine witnesses,
9 the right to present evidence in his defense, the right to introduce evidence in mitigation, the
10 right to reconsideration and the right to appeal any adverse decision or order, which might be
11 rendered by the Board following an administrative hearing held pursuant to the provisions of the
12 Administrative Procedure Act of the State of California.

13 6. Respondent understands that as a direct consequence of making the
14 admissions in the Stipulation, the Board will revoke his license to practice accountancy in
15 California.

16 7. Respondent understands that as a direct consequence of making the
17 admissions and waivers in the Stipulation, the board will revoke his right to practice as an
18 accountant in the State of California.

19 8. Respondent admits the following:

20 **BASIS FOR DISCIPLINE**

21 9. Respondent has subjected his license to discipline under Business and
22 Professions Code section 5100(i) and (g), on the grounds of unprofessional conduct, in that, on
23 August 12, 1998, in the United States of America, Securities and Exchange Commission,
24 ("SEC") File number 3-9672, entitled *In the Matter of Paul E. Nietzel, CPA*, the Security and
25 Exchange Commission issued an Order which denied respondent's privilege of appearing or
26 practicing before the SEC as an Accountant. The SEC's Order also requires respondent to cease
27 and desist from committing or causing any violation or future violation (1) of Section 17(a) of
28 the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5

1 thereunder, or Sections 206(1) or (2) of the Investment Advisers Act; and bars respondent from
2 associating with any broker, dealer, investment adviser or municipal securities dealer.

3 10. On August 12, 1998, the SEC issued a Settled Cease and Desist and
4 Administrative Order against respondent, (Order) finding that respondent, a Certified Public
5 Accountant and associated person of a registered broker-dealer and investment adviser, violated
6 the anti-fraud provisions of the federal securities laws in connection with Normandy America
7 Inc.'s August 1995, \$200 million initial public offering. Normandy's registration statement
8 falsely disclosed that prior to the initial public offering, Christopher K. Bagdasarian, Normandy's
9 Chief Executive Officer, achieved a ten-year average annual rate of return of 29.1%, managing
10 assets ranging from \$250.6 million at the beginning of 1990 to \$731.3 million during 1994.

11 11. The SEC's Order found that respondent knew that Bagdasarian's
12 performance history as an investment manager would be disclosed in Normandy's registration
13 statement and was critical to the successful completion of the initial public offering. According
14 to the Order, at the request and direction of Bagdasarian and Sam White (Bagdasarian's
15 accountant and a former Deloitte & Touche L.L.P. partner with whom respondent had worked),
16 respondent assisted White in creating false schedules which purported to track the content and
17 performance of the assets under Bagdasarian's management. White told respondent that White
18 would provide those schedules to the underwriters in connection with their due diligence
19 investigation, and that the information in the schedules would be disclosed in Normandy's
20 registration statement. The SEC's Order further found that respondent impersonated one of
21 Bagdasarian's investors in a due diligence interview conducted by representatives of Salomon
22 Brothers, which was critical to their determination that the information in Normandy's
23 registration statement was true.

24 12. The circumstances surrounding respondent's unprofessional conduct, were
25 that:

26 As early as August 1994, respondent learned from Bagdasarian and White
27 that Bagdasarian had formed Normandy and was preparing to capitalize it through an initial
28 public offering of common stock, and that Salomon Brothers had been engaged to underwrite the

1 IPO and was conducting its due diligence investigation in connection with that engagement.

2 Respondent knew that Bagdasarian's performance history as an investment
3 manager would be disclosed in Normandy's registration statement and was critical to the
4 successful completion of the IPO. At the request and direction of Bagdasarian and White,
5 respondent assisted White in creating false schedules which purported to track the content and
6 performance of the portfolios under Bagdasarian's management. White told respondent that
7 White would provide those schedules to the underwriters in connection with their due diligence
8 investigation, and that the information in the schedules would be disclosed in Normandy's
9 registration statement. At the request of Bagdasarian and White, respondent labeled the
10 schedules "Christopher K. Bagdasarian/Criterion Holdings Inc." even though he knew that the
11 assets Bagdasarian managed through Criterion Holdings were not included in them.

12 13. In or about June 1995, at the request of Bagdasarian and White,
13 respondent created false work papers which purported to list the procedures Deloitte & Touche,
14 L.L.P. had performed to confirm the accuracy of the information in the schedules labeled
15 "Christopher K. Bagdasarian/Criterion Holdings, Inc." At the time he created the false work
16 papers, respondent believed that White intended to put them in Deloitte's internal files and
17 further knew, or was reckless in not knowing, that no one had performed the listed procedures.

18 **Respondent Violated and Caused Violation of Section 17(a)**
19 **of the Securities Act, Section 10(b) of the Exchange Act**
and Rule 10b-5 Thereunder, and Sections 206(1) and (2) of the Advisers Act

20 14. Respondent knew, or was reckless in not knowing, that the foregoing
21 misrepresentations and omissions were material to the initial public offering, and that his
22 participation in such misrepresentations or omissions would violate, and be a cause of
23 Bagdasarian's violations, of Section 17(a) of the Securities Act; Section 10(b) of the Exchange
24 Act; Rule 10b-5 thereunder; and, Sections 206(1) and (2) of the Advisers Act.

25 15. Respondent willfully violated, or willfully aided and abetted
26 Bagdasarian's violations of, the federal securities laws in connection with Normandy's
27 registration statement, as follows:

28 ///

1 a. Falsely labeled portfolio schedules he knew would be provided to
2 Salomon Brothers to indicate the inclusion of assets which Bagdasarian managed through
3 Criterion Holdings, knowing that such assets had not been included;

4 b. Created false work papers which purported to enumerate
5 procedures Deloitte & Touche, L.L.P. had performed to confirm the accuracy of the schedules,
6 although he knew or was reckless in not knowing that such procedures had not been performed;
7 and,

8 c. Impersonated one of Bagdasarian's investors in a due diligence
9 telephone interview conducted by Salomon Brothers on June 28, 1995.

10 16. Based on the above-findings, the Securities Exchange Commission issued
11 an Order that:

12 “A. Nietzel shall cease and desist from committing or
13 causing any violation or future violation of Section
14 17(a) of the Securities Act, Section 10(b) of the
Exchange Act and Rule 10b-5 thereunder, or
Sections 206(1) and (2) of the Advisers Act;

15 B. Nietzel shall be, and hereby is, barred from
16 associating with any broker, dealer, investment
adviser or municipal securities dealer; and,

17 C. Nietzel shall be, and hereby is, denied the privilege
18 of appearing or practicing before the Commission as
an accountant.”

19 17. Respondent has subjected his license to discipline under Business and
20 Professions Code section 5100, in that, his right to practice before the Securities and Exchange
21 Commission was revoked based on knowing preparation of false, fraudulent and materially
22 misleading financial statements, reports and information, as set forth above.

23 18. Admissions made by respondent herein are for purposes of this
24 proceeding, for any other disciplinary proceedings by the Board or in any action taken by or
25 before any governmental body which licenses accountants, and for any petition for reinstatement,
26 but has no force or effect in any other case or proceeding.

27 19. It is understood by respondent that, in deciding whether to adopt this
28 Stipulation, the Board may receive oral and written communications from its staff and the

1 Attorney General's office. Communications pursuant to this paragraph shall not disqualify the
2 Board or other persons from future participation in this or any other matter affecting respondent.
3 In the event this settlement is not adopted by the Board, the Stipulation will not become effective
4 and may not be used for any purpose, except for this paragraph, which shall remain in effect.

5 20. In consideration of the foregoing admissions and findings, the parties
6 agree that the Board shall, without further notice of formal proceeding, issue and enter an Order
7 as follows:

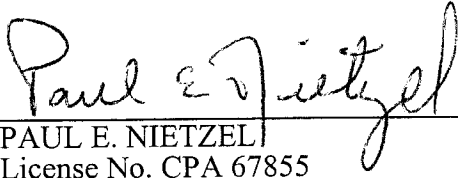
8 **DISCIPLINARY ORDER**

9 IT IS HEREBY ORDERED that License No. CPA 67855 issued to Paul E.
10 Nietzel, is revoked.

1 ACCEPTANCE

2 I have carefully read and fully understand the Stipulation and Order set forth
3 above. I understand that in signing this Stipulation, I am waiving my right to a hearing on the
4 charges set forth in the Accusation on file in this matter. I further understand that in signing this
5 Stipulation, the Board shall enter the foregoing Order placing certain requirements, restrictions
6 and limitations on my right to practice as a Certified Public Accountant or Public Accountant in
7 the State of California

8 Dated: 8/6/99

9 
10 PAUL E. NIETZEL
11 License No. CPA 67855
12 Respondent

13 ENDORSEMENT

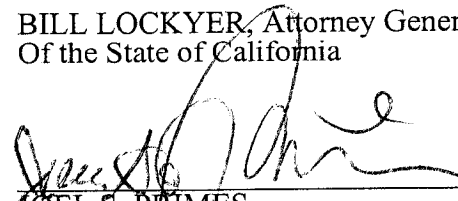
14 The within Stipulation shall be subject to the approval of the Board. If the Board
15 fails to adopt this Stipulation as its Order, the Stipulation will be of no force or effect for either
16 party.

17 I concur in the Stipulation and Order.

18
19 Dated: Aug. 12, 1999

20 BILL LOCKYER, Attorney General
21 Of the State of California

22 By:

23 
24 JOEL S. PRIMES
25 Deputy Attorney General
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1 **DECISION AND ORDER**
2 **OF THE BOARD OF ACCOUNTANCY**

3 The foregoing Stipulation and Order is hereby adopted as the Order of the
4 California Board of Accountancy, Department of Consumer Affairs, State of California. An
5 effective date of OCTOBER 21, 1999, has been assigned to this Decision and Order

6 Made this 22 day of SEPTEMBER, 1999.

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8 H. E. Melles
9 For the Board of Accountancy
10 Department of Consumer Affairs
11 State of California
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PAUL E. NIETZEL
212 S. 74th Street, Suite 203
Omaha, Nebraska 68114

CPA License Number 67855

Respondent.

ACCUSATION

Carol Sigmann, for causes for discipline, alleges:

1. Complainant Carol Sigmann makes and files this Accusation solely in her official capacity as Executive Officer, Board of Accountancy, Department of Consumer Affairs, State of California (hereinafter "Board").

LICENSE INFORMATION

2. On November 18, 1994, the Board issued Certified Public Accountant Certificate number 67855 to Paul E. Nietzel (hereinafter "respondent"). The certificate is subject to renewal every two years. The renewal period for this certificate is June 1 through May 31 of odd numbered years. The certificate was renewed effective June 1, 1995, through May 31, 1997, upon receipt of the renewal fee and declaration of compliance with the continuing education regulations from respondent.

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1 3. The certificate expired and was not valid during the period of June 1,
2 1997, through June 4, 1997, for the following reasons:

3 a. The renewal fee, required by the Business and Professions Code,
4 section 5070.5, was not paid; and,

5 b. Declaration of compliance with continuing education requirements
6 was not submitted.

7 4. The certificate was renewed, effective June 5, 1997, upon receipt of the
8 renewal fee. The certificate was renewed without continuing education ("inactive") and is
9 currently effective through May 31, 1999.

10 5. The last address of record for respondent, Paul E. Nietzel, Certificate
11 number CPA 67855, as appearing in the records of the California State Board of Accountancy, in
12 conformance with California Code of Regulations, Title 16, Chapter 1, section 3, is: Paul E.
13 Nietzel, 212 S. 74th Street, Suite 203, Omaha, Nebraska 68114.

14 **STATUTES AND REGULATIONS**

15 6. Business and Professions Code section 5100, provides in part, that the
16 Board may revoke, suspend or refuse to renew any permit or certificate issued by the Board for
17 unprofessional conduct which includes, but is not limited to, one or any combination of the
18 following causes:

19 (i.) Knowing preparation, publication, or dissemination
20 of false, fraudulent, or materially misleading
 financial statements, reports, or information.

21 ...

22 (g.) Revocation of the right to practice before a
23 governmental agency.

24 7. Business and Professions Code section 118(b), provides in pertinent part,
25 that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a
26 disciplinary action during the period within which the license may be renewed, restored, reissued
27 or reinstated. Under Business and Professions Code section 5070.6, the Board may renew an
28 expired license at any time within five years after its expiration.

1 8. Title 16, California Code of Regulations, section 99, provides in pertinent
2 part, that a crime or act shall be considered to be substantially related to the qualifications,
3 functions or duties of a Certified Public Accountant or Public Accountant if, to a substantial
4 degree, it evidences present or potential unfitness of a Certified Public Accountant or Public
5 Accountant to perform the functions authorized by his certificate or permit in a manner
6 consistent with the public health, safety, or welfare. Such crimes or acts shall include, but may
7 not be limited to, those involving the following:

- 8 (a) Fiscal dishonesty or breach of fiduciary responsibility of any kind.
9 (c) Dishonesty, fraud, or gross negligence in the practice of public
10 accountancy or in the performance of the bookkeeping operations described in Business and
11 Professions Code section 5052.

12 9. Business and Professions Code section 5107, provides in pertinent part,
13 that the Executive Officer may request the administrative law judge to direct any holder of a
14 permit or certificate found guilty of unprofessional conduct in violation of subdivision (i) of
15 section 5100, to pay all reasonable costs of the investigation and enforcement of the case,
16 including, but not limited to, attorneys fees.

17 CAUSES FOR DISCIPLINE

18 10. Respondent has subjected his license to discipline under Business and
19 Professions Code section 5100(i) and (g), on the grounds of unprofessional conduct, in that, on
20 August 12, 1998, in the United States of America, Securities and Exchange Commission,
21 ("SEC") File number 3-9672, entitled *In the Matter of Paul E. Nietzel, CPA*, the Security and
22 Exchange Commission issued an Order which denied respondent's privilege of appearing or
23 practicing before the SEC as an Accountant. The SEC's Order also requires respondent to cease
24 and desist from committing or causing any violation or future violation (1) of Section 17(a) of
25 the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5
26 thereunder, or Sections 206(1) or (2) of the Investment Advisers Act; and bars respondent from
27 associating with any broker, dealer, investment adviser or municipal securities dealer.

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1 11. On August 12, 1998, the SEC issued a Settled Cease and Desist and
2 Administrative Order against respondent, (Order) finding that respondent, a Certified Public
3 Accountant and associated person of a registered broker-dealer and investment adviser, violated
4 the anti-fraud provisions of the federal securities laws in connection with Normandy America
5 Inc.'s August 1995, \$200 million initial public offering. Normandy's registration statement
6 falsely disclosed that prior to the initial public offering, Christopher K. Bagdasarian, Normandy's
7 Chief Executive Officer, achieved a ten-year average annual rate of return of 29.1%, managing
8 assets ranging from \$250.6 million at the beginning of 1990 to \$731.3 million during 1994.

9 12. The SEC's Order found that respondent knew that Bagdasarian's
10 performance history as an investment manager would be disclosed in Normandy's registration
11 statement and was critical to the successful completion of the initial public offering. According
12 to the Order, at the request and direction of Bagdasarian and Sam White (Bagdasarian's
13 accountant and a former Deloitte & Touche L.L.P. partner with whom respondent had worked),
14 respondent assisted White in creating false schedules which purported to track the content and
15 performance of the assets under Bagdasarian's management. White told respondent that White
16 would provide those schedules to the underwriters in connection with their due diligence
17 investigation, and that the information in the schedules would be disclosed in Normandy's
18 registration statement. The SEC's Order further found that respondent impersonated one of
19 Bagdasarian's investors in a due diligence interview conducted by representatives of Salomon
20 Brothers, which was critical to their determination that the information in Normandy's
21 registration statement was true.

22 13. The circumstances surrounding respondent's unprofessional conduct, were
23 that:

24 As early as August 1994, respondent learned from Bagdasarian and White
25 that Bagdasarian had formed Normandy and was preparing to capitalize it through an initial
26 public offering of common stock, and that Salomon Brothers had been engaged to underwrite the
27 IPO and was conducting its due diligence investigation in connection with that engagement.

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Respondent knew that Bagdasarian's performance history as an investment manager would be disclosed in Normandy's registration statement and was critical to the successful completion of the IPO. At the request and direction of Bagdasarian and White, respondent assisted White in creating false schedules which purported to track the content and performance of the portfolios under Bagdasarian's management. White told respondent that White would provide those schedules to the underwriters in connection with their due diligence investigation, and that the information in the schedules would be disclosed in Normandy's registration statement. At the request of Bagdasarian and White, respondent labeled the schedules "Christopher K. Bagdasarian/Criterion Holdings Inc." even though he knew that the assets Bagdasarian managed through Criterion Holdings were not included in them.

14. In or about June 1995, at the request of Bagdasarian and White, respondent created false work papers which purported to list the procedures Deloitte & Touche, L.L.P. had performed to confirm the accuracy of the information in the schedules labeled "Christopher K. Bagdasarian/Criterion Holdings, Inc." At the time he created the false work papers, respondent believed that White intended to put them in Deloitte's internal files and further knew, or was reckless in not knowing, that no one had performed the listed procedures.

**Respondent Violated and Caused Violation of Section 17(a)
of the Securities Act, Section 10(b) of the Exchange Act
and Rule 10b-5 Thereunder, and Sections 206(1) and (2) of the Advisers Act**

15. Respondent knew, or was reckless in not knowing, that the foregoing misrepresentations and omissions were material to the initial public offering, and that his participation in such misrepresentations or omissions would violate, and be a cause of Bagdasarian's violations, of Section 17(a) of the Securities Act; Section 10(b) of the Exchange Act; Rule 10b-5 thereunder; and, Sections 206(1) and (2) of the Advisers Act.

16. Respondent willfully violated, or willfully aided and abetted Bagdasarian's violations of, the federal securities laws in connection with Normandy's registration statement, as follows:

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2 Salomon Brothers to indicate the inclusion of assets which Bagdasarian managed through
3 Criterion Holdings, knowing that such assets had not been included;

4 b. Created false work papers which purported to enumerate
5 procedures Deloitte & Touche, L.L.P. had performed to confirm the accuracy of the schedules,
6 although he knew or was reckless in not knowing that such procedures had not been performed;
7 and,

8 c. Impersonated one of Bagdasarian's investors in a due diligence
9 telephone interview conducted by Salomon Brothers on June 28, 1995.

10 17. Based on the above-findings, the Securities Exchange Commission issued
11 an Order that:

12 "A. Nietzel shall cease and desist from committing or
13 causing any violation or future violation of Section
14 17(a) of the Securities Act, Section 10(b) of the
Exchange Act and Rule 10b-5 thereunder, or
Sections 206(1) and (2) of the Advisers Act;

15 B. Nietzel shall be, and hereby is, barred from
16 associating with any broker, dealer, investment
adviser or municipal securities dealer; and,

17 C. Nietzel shall be, and hereby is, denied the privilege
18 of appearing or practicing before the Commission as
an accountant."

19 18. Respondent has subjected his license to discipline under Business and
20 Professions Code section 5100, in that, his right to practice before the Securities and Exchange
21 Commission was revoked based on knowing preparation of false, fraudulent and materially
22 misleading financial statements, reports and information, as set forth above.

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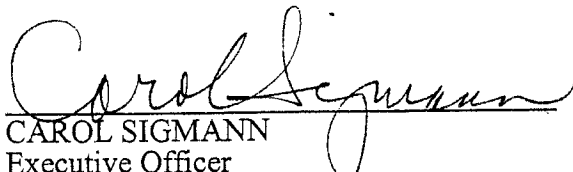
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PRAYER

WHEREFORE, Complainant requests that a hearing be held and that following said hearing, the Board issue a Decision:

1. Revoking, suspending, or otherwise imposing discipline upon Certified Public Accountant Certificate number 67855, issued to Paul E. Nietzel.
2. Order Paul E. Nietzel to pay to the Board, all reasonable costs of the investigation and enforcement of the case, including, but not limited to, attorneys fees pursuant to Business and Professions Code section 5107; and,
3. Taking such other and further action as the Board deems appropriate to protect the public health, safety and welfare.

Dated: June 1, 1999


CAROL SIGMANN
Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California

Complainant